

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 123

FINAL READING

Introduced by Banking, Commerce and Insurance Committee: Pahls, 31,
Chairperson; Carlson, 38; Christensen, 44; Gay, 14;
Hansen, 42; Langemeier, 23; Pankonin, 2; Pirsch, 4.

Read first time January 8, 2007

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to real property; to amend section 87-302,
2 Revised Statutes Cumulative Supplement, 2006; to adopt
3 the Nebraska Foreclosure Protection Act; to provide a
4 penalty; to change provisions relating to the Uniform
5 Deceptive Trade Practices Act; and to repeal the original
6 section.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 28 of this act shall be known
2 and may be cited as the Nebraska Foreclosure Protection Act.

3 Sec. 2. The Legislature hereby finds, determines, and
4 declares that home ownership and the accumulation of equity in
5 one's home provide significant social and economic benefits to
6 the state and its citizens. Unfortunately, too many homeowners in
7 financial distress, especially the poor, elderly, and financially
8 unsophisticated, are vulnerable to a variety of deceptive or
9 unconscionable business practices designed to dispossess them or
10 otherwise strip the equity from their homes. There is a compelling
11 need to curtail and prevent the most deceptive and unconscionable
12 of these business practices, provide each homeowner with
13 information necessary to make an informed and intelligent decision
14 regarding transactions with certain foreclosure consultants and
15 equity purchasers, provide certain minimum requirements for
16 contracts between such parties, including statutory rights to
17 cancel such contracts, and ensure and foster fair dealing in the
18 sale and purchase of homes in foreclosure. Therefor, it is the
19 intent of the Legislature that all violations of the Nebraska
20 Foreclosure Protection Act have a significant public impact and
21 that the terms of the act be liberally construed to achieve these
22 purposes.

23 Sec. 3. For purposes of the Nebraska Foreclosure
24 Protection Act, unless the context otherwise requires, the
25 definitions found in sections 4 to 12 of this act apply.

1 Sec. 4. Associate means a partner, a subsidiary, an
2 affiliate, an agent, or any other person working in association
3 with a foreclosure consultant or an equity purchaser. Associate
4 does not include a person who is excluded from the definition of an
5 equity purchaser or a foreclosure consultant.

6 Sec. 5. Equity purchase contract means an agreement
7 between an equity purchaser and a homeowner pertaining to the
8 acquisition of title to the homeowner's personal residence.

9 Sec. 6. Equity purchaser means a person who, in the
10 course of the person's business, vocation, or occupation, acquires
11 title to a residence in foreclosure. Equity purchaser does not
12 include a person who acquires such title:

13 (1) For the purpose of using such property as his or her
14 personal residence for at least one year;

15 (2) By a deed in lieu of foreclosure to the holder of
16 an evidence of debt, or an associate of the holder of an evidence
17 of debt, of a consensual lien or encumbrance of record, if such
18 consensual lien or encumbrance is recorded in the register of deeds
19 office of the county where the residence in foreclosure is located
20 prior to a foreclosure sale;

21 (3) By a deed from any trustee, sheriff, or other person
22 appointed by a court as a result of a foreclosure sale;

23 (4) At a sale of property authorized by statute;

24 (5) By order or judgment of any court;

25 (6) From the person's spouse, relative, or relative of

1 a spouse, by the half or whole blood or by adoption, or from a
2 guardian, conservator, or personal representative of such person;
3 or

4 (7) While performing services as a part of a person's
5 normal business activities under any law of this state or the
6 United States that regulates banks, trust companies, savings
7 and loan associations, credit unions, insurance companies, title
8 insurers, insurance producers, or escrow companies authorized to
9 conduct business in this state, an affiliate or subsidiary of such
10 person, or an employee or agent acting on behalf of such person.

11 Sec. 7. Evidence of debt means a writing that evidences a
12 promise to pay or a right to the payment of a monetary obligation
13 such as a promissory note; bond; negotiable instrument; loan,
14 credit, or similar agreement; or monetary judgment entered by a
15 court of competent jurisdiction.

16 Sec. 8. (1) Foreclosure consultant means a person who:

17 (a) Does not, directly or through an associate, take or
18 acquire any interest in or title to the residence in foreclosure;
19 and

20 (b) In the course of such person's business, vocation,
21 or occupation, makes a solicitation, representation, or offer to
22 a homeowner to perform, in exchange for compensation from the
23 homeowner or from the proceeds of any loan or advance of funds, a
24 service that the person represents will do any of the following:

25 (i) Stop or postpone a foreclosure sale;

- 1 (ii) Obtain a forbearance from a beneficiary under a deed
2 of trust, mortgage, or other lien;
- 3 (iii) Assist the homeowner in exercising a right to cure
4 a default;
- 5 (iv) Obtain an extension of the period within which the
6 homeowner may cure a default;
- 7 (v) Obtain a waiver of an acceleration clause contained
8 in an evidence of debt secured by a deed of trust, mortgage, or
9 other lien on a residence in foreclosure or contained in such deed
10 of trust, mortgage, or other lien;
- 11 (vi) Assist the homeowner to obtain a loan or an advance
12 of funds;
- 13 (vii) Avoid or reduce the impairment of the homeowner's
14 credit resulting from the recording of a notice of election and
15 demand for sale, commencement of a judicial foreclosure action, any
16 foreclosure sale or the granting of a deed in lieu of foreclosure,
17 or any late payment or other failure to pay or perform under the
18 evidence of debt, the deed of trust, or other lien securing such
19 evidence of debt;
- 20 (viii) In any way delay, hinder, or prevent the
21 foreclosure upon the homeowner's residence; or
- 22 (ix) Assist the homeowner in obtaining from the
23 beneficiary, mortgagee, or grantee of the lien in foreclosure,
24 or from counsel for such beneficiary, mortgagee, or grantee, the
25 remaining or excess proceeds from the foreclosure sale of the

1 residence in foreclosure.

2 (2) Foreclosure consultant does not include:

3 (a) A person licensed to practice law in this state while
4 performing any activity related to the person's attorney-client
5 relationship with a homeowner or any activity related to the
6 person's attorney-client relationship with the beneficiary,
7 mortgagee, grantee, or holder of any lien being enforced by way
8 of foreclosure;

9 (b) A holder or servicer of an evidence of debt or the
10 attorney for the holder or servicer of an evidence of debt secured
11 by a deed of trust or other lien on any residence in foreclosure
12 while the person performs services in connection with the evidence
13 of debt, lien, deed of trust, or other lien securing such debt;

14 (c) A person doing business under any law of this state
15 or the United States, which law regulates banks, trust companies,
16 savings and loan associations, credit unions, insurance companies,
17 title insurers, insurance producers, or escrow companies authorized
18 to conduct business in the state, while the person performs
19 services as part of the person's normal business activities, an
20 affiliate or subsidiary of any of such entities, or an employee or
21 agent acting on behalf of any of such entities;

22 (d) A person originating or closing a loan in a person's
23 normal course of business, if, as to that loan:

24 (i) The loan is subject to the requirements of the
25 federal Real Estate Settlement Procedures Act of 1974, 12 U.S.C.

1 2601 et seq., as the act existed on the effective date of this act;

2 or

3 (ii) With respect to any junior mortgage or home
4 equity line of credit, the loan is subordinate to and closed
5 simultaneously with a qualified first mortgage loan under
6 subdivision (2)(d)(i) of this section or is initially payable
7 on the face of the note or contract to an entity included in
8 subdivision (2)(c) of this section;

9 (e) A judgment creditor of the homeowner;

10 (f) A title insurance company or title insurance agent
11 authorized to conduct business in this state while performing title
12 insurance and settlement services;

13 (g) A person licensed as a real estate broker, associate
14 broker, or real estate salesperson pursuant to the Nebraska Real
15 Estate License Act while the person engages in any activity for
16 which the person is licensed; or

17 (h) A nonprofit organization that solely offers
18 counseling or advice to homeowners in foreclosure or loan default,
19 unless the organization is an associate of the foreclosure
20 consultant.

21 Sec. 9. Foreclosure consulting contract means any
22 agreement between a foreclosure consultant and a homeowner.

23 Sec. 10. Holder of evidence of debt means the person in
24 actual possession of or otherwise entitled to enforce an evidence
25 of debt, except that holder of evidence of debt does not include a

1 person acting as a nominee solely for the purpose of holding the
2 evidence of debt or deed of trust as an electronic registry without
3 any authority to enforce the evidence of debt or deed of trust.
4 The following persons are presumed to be the holder of evidence of
5 debt:

6 (1) The person who is the obligee of and who is in
7 possession of an original evidence of debt;

8 (2) The person in possession of an original evidence of
9 debt together with the proper endorsement or assignment thereof to
10 such person;

11 (3) The person in possession of a negotiable instrument
12 evidencing a debt which has been duly negotiated to such person or
13 to bearer or indorsed in blank; or

14 (4) The person in possession of an evidence of debt with
15 authority, which may be granted by the original evidence of debt
16 or deed of trust, to enforce the evidence of debt as an agent, a
17 nominee, or a trustee or in a similar capacity for the obligee of
18 the evidence of debt.

19 Sec. 11. Homeowner means the owner of a residence in
20 foreclosure, including a vendee under a contract for deed to real
21 property as defined in subdivision (15) of section 45-702.

22 Sec. 12. Residence in foreclosure means a residence
23 or dwelling that is occupied as the homeowner's principal place
24 of residence and against which any type of foreclosure action,
25 including, but not limited to, the filing of a notice of default of

1 a deed of trust or the filing of a lawsuit to foreclose a mortgage
2 or other lien, has been commenced.

3 Sec. 13. (1) A foreclosure consulting contract shall
4 be in writing and provided to and retained by the homeowner,
5 with changes, alterations, or modifications, for review at least
6 twenty-four hours before it is signed by the homeowner.

7 (2) A foreclosure consulting contract shall be printed
8 in at least twelve-point type and shall include the name, address,
9 facsimile number, and email address of the foreclosure consultant
10 to which a notice of cancellation may be delivered and the date the
11 homeowner signed the contract.

12 (3) A foreclosure consulting contract shall fully
13 disclose the exact nature of the foreclosure consulting services to
14 be provided and the total amount and terms of any compensation to
15 be received by the foreclosure consultant or associate.

16 (4) A foreclosure consulting contract shall be dated and
17 personally signed, with each page being initialed by each homeowner
18 of the residence in foreclosure and the foreclosure consultant, and
19 shall be acknowledged by a notary public in the presence of the
20 homeowner at the time the contract is signed by the homeowner.

21 (5) A foreclosure consulting contract shall contain
22 the following notice, which shall be printed in at least
23 fourteen-point, boldface type, completed with the name of the
24 foreclosure consultant, and located in immediate proximity to the
25 space reserved for the homeowner's signature:

1 NOTICE REQUIRED BY NEBRASKA LAW
 2 (NAME OF FORECLOSURE CONSULTANT) OR
 3 (HIS/HER/ITS) ASSOCIATE CANNOT ASK YOU TO SIGN OR HAVE YOU SIGN
 4 ANY DOCUMENT THAT TRANSFERS ANY INTEREST IN YOUR HOME OR PROPERTY
 5 TO (HIM/HER/IT) OR (HIS/HER/ITS) ASSOCIATE.

6 (NAME OF FORECLOSURE CONSULTANT) OR
 7 (HIS/HER/ITS) ASSOCIATE CANNOT GUARANTEE YOU THAT THEY WILL BE ABLE
 8 TO REFINANCE YOUR HOME OR ARRANGE FOR YOU TO KEEP YOUR HOME. YOU
 9 MAY, AT ANY TIME, CANCEL THIS CONTRACT, WITHOUT PENALTY OF ANY
 10 KIND.

11 IF YOU WANT TO CANCEL THIS CONTRACT, MAIL OR DELIVER
 12 A SIGNED AND DATED COPY OF THIS NOTICE OF CANCELLATION, OR
 13 ANY OTHER WRITTEN NOTICE, INDICATING YOUR INTENT TO CANCEL TO
 14 (NAME OF FORECLOSURE CONSULTANT) AT
 15 (ADDRESS OF FORECLOSURE CONSULTANT, INCLUDING FACSIMILE NUMBER AND
 16 EMAIL ADDRESS).

17 AS PART OF ANY CANCELLATION, YOU (THE HOMEOWNER) MUST
 18 REPAY ANY MONEY ACTUALLY SPENT ON YOUR BEHALF BY
 19 (NAME OF FORECLOSURE CONSULTANT) PRIOR TO RECEIPT OF THIS NOTICE
 20 AND, AS A RESULT OF THIS AGREEMENT, WITHIN SIXTY DAYS, ALONG WITH
 21 INTEREST AT THE PRIME RATE PUBLISHED BY THE FEDERAL RESERVE BOARD
 22 PLUS TWO PERCENTAGE POINTS, WITH THE TOTAL INTEREST RATE NOT TO
 23 EXCEED EIGHT PERCENT PER YEAR.

24 THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN
 25 THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY OR A HOUSING COUNSELOR

1 APPROVED BY THE FEDERAL DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
2 BEFORE SIGNING.

3 (6) A completed form in duplicate, captioned NOTICE OF
4 CANCELLATION, shall accompany a foreclosure consulting contract.

5 The notice of cancellation shall:

6 (a) Be on a separate sheet of paper attached to the
7 contract;

8 (b) Be easily detachable; and

9 (c) Contain the following statement, printed in at least
10 fourteen-point type:

11 NOTICE OF CANCELLATION

12 (DATE OF CONTRACT)

13 TO: (NAME OF FORECLOSURE CONSULTANT)

14 (ADDRESS OF FORECLOSURE CONSULTANT, INCLUDING FACSIMILE
15 NUMBER AND EMAIL ADDRESS)

16 I HEREBY CANCEL THIS CONTRACT.

17 (DATE)

18 (HOMEOWNER'S SIGNATURE)

19 (7) A foreclosure consultant shall provide to the
20 homeowner a signed, dated, and acknowledged copy of the foreclosure
21 consulting contract and the attached notice of cancellation
22 immediately upon execution of the contract.

23 (8) The time during which the homeowner may cancel a
24 foreclosure consulting contract does not begin to run until the
25 foreclosure consultant has complied with this section.

1 Sec. 14. (1) In addition to any right of rescission
2 available under state or federal law, a homeowner has the right to
3 cancel a foreclosure consulting contract at any time.

4 (2) Cancellation occurs when a homeowner gives written
5 notice of cancellation of the foreclosure consulting contract to
6 the foreclosure consultant at the address specified in the contract
7 or through any facsimile number or email address identified in
8 the contract or other materials provided to the homeowner by the
9 foreclosure consultant.

10 (3) Notice of cancellation, if given by mail, is
11 effective when deposited in the United States mail, properly
12 addressed, with postage prepaid.

13 (4) Notice of cancellation need not be in the form
14 provided with the contract and is effective, however expressed,
15 if it indicates the intention of the homeowner to cancel the
16 foreclosure consulting contract.

17 (5) As part of the cancellation of a foreclosure
18 consulting contract, the homeowner shall repay, within sixty days
19 after the date of cancellation, all funds paid or advanced in
20 good faith prior to the receipt of notice of cancellation by the
21 foreclosure consultant or his or her associate under the terms
22 of the foreclosure consulting contract, together with interest at
23 the prime rate published by the Federal Reserve Board plus two
24 percentage points, with the total interest rate not to exceed eight
25 percent per year, from the date of expenditure until repaid by the

1 homeowner.

2 (6) Except as provided in subsection (5) of this section,
3 the right to cancel shall not be conditioned on the repayment of
4 any funds.

5 Sec. 15. A provision in a foreclosure consulting contract
6 is void as against public policy if the provision attempts or
7 purports to:

8 (1) Waive any of the rights specified in sections 13 to
9 18 of this act or the right to a jury trial;

10 (2) Consent to jurisdiction for litigation or choice of
11 law in a state other than Nebraska;

12 (3) Consent to venue in a county other than the county in
13 which the residence in foreclosure is located; or

14 (4) Impose any costs or fees greater than the actual
15 costs and fees.

16 Sec. 16. A foreclosure consultant shall not:

17 (1) Claim, demand, charge, collect, or receive any
18 compensation until after the foreclosure consultant has fully
19 performed each and every service the foreclosure consultant
20 contracted to perform or represented that the foreclosure
21 consultant would perform;

22 (2) Claim, demand, charge, collect, or receive any
23 interest or any other compensation for a loan that the foreclosure
24 consultant makes to the homeowner that exceeds the prime rate
25 published by the Federal Reserve Board at the time of any loan plus

1 two percentage points, with the total interest rate not to exceed
2 eight percent per year;

3 (3) Take a wage assignment, a lien of any type on real or
4 personal property, or any other security to secure the payment of
5 compensation;

6 (4) Receive any consideration from a third party in
7 connection with foreclosure consulting services provided to a
8 homeowner unless the consideration is first fully disclosed in
9 writing to the homeowner;

10 (5) Acquire an interest, directly, indirectly, or through
11 an associate, in the real or personal property of a homeowner with
12 whom the foreclosure consultant has contracted;

13 (6) Obtain a power of attorney from a homeowner for any
14 purpose other than to inspect documents as provided by law; or

15 (7) Induce or attempt to induce a homeowner to enter
16 into a foreclosure consulting contract that does not comply in all
17 respects with sections 13 to 18 of this act.

18 Sec. 17. (1) A foreclosure consultant or associate may
19 not facilitate or engage in any transaction that is unconscionable
20 given the terms and circumstances of the transaction.

21 (2)(a) If a court, as a matter of law, finds a
22 foreclosure consulting contract or any clause of such contract
23 to have been unconscionable at the time it was made, the court
24 may refuse to enforce the contract, enforce the remainder of
25 the contract without the unconscionable clause, or so limit

1 the application of any unconscionable clause as to avoid an
2 unconscionable result.

3 (b) When it is claimed or appears to the court that
4 a foreclosure consulting contract or any clause of such contract
5 may be unconscionable, the parties shall be afforded a reasonable
6 opportunity to present evidence as to its commercial setting,
7 purpose, and effect to aid the court in making the determination.

8 (c) In order to support a finding of unconscionability,
9 there must be evidence of an unreasonable inequality of bargaining
10 power or other circumstances in which there is an absence of
11 meaningful choice for one of the parties, together with contract
12 terms that are, under standard industry practices, unreasonably
13 favorable to the foreclosure consultant or associate.

14 Sec. 18. A foreclosure consulting contract, and all
15 notices of cancellation provided for therein, shall be written
16 in English and shall be accompanied by a written translation
17 from English into any other language principally spoken by the
18 homeowner, certified by the person making the translation as a
19 true and correct translation of the English version. The translated
20 version shall be presumed to have equal status and credibility as
21 the English version.

22 Sec. 19. Every equity purchase contract shall be written
23 in at least twelve-point, boldface type and fully completed,
24 signed, and dated by the homeowner and equity purchaser prior
25 to the execution of any instrument quitclaiming, assigning,

1 transferring, conveying, or encumbering an interest in the
2 residence in foreclosure.

3 Sec. 20. (1) Every equity purchase contract shall contain
4 the entire agreement of the parties and shall include the
5 following:

6 (a) The name, business address, telephone number,
7 facsimile number, and email address of the equity purchaser;

8 (b) The street address and full legal description of the
9 residence in foreclosure;

10 (c) Clear and conspicuous disclosure of any financial or
11 legal obligations of the homeowner that will be assumed by the
12 equity purchaser. If the equity purchaser will not be assuming
13 any financial or legal obligations of the homeowner, the equity
14 purchase contract shall so state;

15 (d) The total consideration to be paid by the equity
16 purchaser in connection with or incident to the acquisition by the
17 equity purchaser of the residence in foreclosure;

18 (e) The terms of payment or other consideration,
19 including, but not limited to, any services of any nature that the
20 equity purchaser represents will be performed for the homeowner
21 before or after the sale;

22 (f) The date and time when possession of the residence in
23 foreclosure is to be transferred to the equity purchaser;

24 (g) The terms of any rental agreement or lease;

25 (h) The specifications of any option or right to

1 repurchase the residence in foreclosure, including the specific
2 amounts of any escrow deposit, downpayment, purchase price, closing
3 costs, commissions, or other fees or costs;

4 (i) A notice of cancellation as provided in section 22 of
5 this act; and

6 (j) The following notice, in at least fourteen-point,
7 boldface type, completed with the name of the equity purchaser,
8 immediately above the statement required by section 22 of this act:

9 NOTICE REQUIRED BY NEBRASKA LAW

10 UNTIL YOUR RIGHT TO CANCEL THIS CONTRACT HAS
11 ENDED, (NAME) OR ANYONE WORKING FOR
12 (NAME) CANNOT ASK YOU TO SIGN OR HAVE YOU SIGN
13 ANY DEED OR ANY OTHER DOCUMENT.

14 (2) The equity purchase contract required by this section
15 survives delivery of any instrument of conveyance of the residence
16 in foreclosure, but does not have any effect on persons other than
17 the parties to the contract or affect title to the residence in
18 foreclosure.

19 Sec. 21. (1)(a) In addition to any right of rescission
20 available under state or federal law, a homeowner has the right
21 to cancel an equity purchase contract until midnight of the third
22 business day following the day on which the homeowner signs a
23 contract that complies with the Nebraska Foreclosure Protection Act
24 or until noon on the last business day before the foreclosure sale
25 of the residence in foreclosure, whichever occurs first.

1 (b) There shall be no right to cancel under the act with
2 regard to any equity purchase contract executed on or after noon of
3 the last business day before the foreclosure sale of the residence
4 in foreclosure, if the homeowner first agrees to enter into an
5 equity purchase contract with the equity purchaser on or after noon
6 of the last business day before the foreclosure sale.

7 (2) Cancellation occurs when a homeowner personally
8 delivers written notice of cancellation to the address specified in
9 the equity purchase contract or upon deposit of such notice in the
10 United States mail, properly addressed, with postage prepaid.

11 (3) A notice of cancellation given by a homeowner need
12 not take the particular form as provided with the equity purchase
13 contract and, however expressed, is effective if it indicates the
14 intention of the homeowner not to be bound by the equity purchase
15 contract.

16 (4) In the absence of any written notice of cancellation
17 from a homeowner, the execution by the homeowner of a deed or
18 other instrument of conveyance of an interest in the residence
19 in foreclosure to the equity purchaser after the expiration of
20 the rescission period creates a rebuttable presumption that the
21 homeowner did not cancel the equity purchase contract.

22 Sec. 22. (1)(a) The equity purchase contract shall
23 contain, as the last provision before the space reserved for
24 the homeowner's signature, a conspicuous statement in at least
25 twelve-point, boldface type, as follows:

1 YOU MAY CANCEL THIS CONTRACT FOR THE SALE OF YOUR
 2 HOUSE WITHOUT ANY PENALTY OR OBLIGATION AT ANY TIME BEFORE
 3 (DATE AND TIME OF DAY). SEE THE ATTACHED NOTICE OF
 4 CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

5 (b) The equity purchaser shall accurately specify, within
 6 the equity purchase contract, the date and time of day on which the
 7 cancellation right ends.

8 (c) If no right to cancel the equity purchase contract
 9 exists under the Nebraska Foreclosure Protection Act as set
 10 forth in subdivision (1)(b) of section 21 of this act, the
 11 equity purchase contract shall conspicuously state that no such
 12 cancellation right exists.

13 (2) The equity purchase contract shall be accompanied by
 14 duplicate completed forms, captioned Notice of Cancellation in at
 15 least twelve-point, boldface type if the equity purchase contract
 16 is printed or in capital letters if the equity purchase contract
 17 is typed, followed by a space in which the equity purchaser shall
 18 enter the date on which the homeowner executed the equity purchase
 19 contract. Such form shall:

20 (a) Be attached to the equity purchase contract;

21 (b) Be easily detachable; and

22 (c) Contain the following statement, in at least
 23 ten-point type if the equity purchase contract is printed or in
 24 capital letters if the contract is typed:

25 NOTICE OF CANCELLATION

1 (ENTER DATE EQUITY PURCHASE CONTRACT WAS
2 SIGNED). YOU MAY CANCEL THIS CONTRACT FOR THE SALE OF YOUR
3 HOUSE, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME BEFORE
4 (ENTER DATE AND TIME OF DAY). TO CANCEL THIS
5 TRANSACTION, PERSONALLY DELIVER A SIGNED AND DATED COPY OF
6 THIS NOTICE OF CANCELLATION IN THE UNITED STATES MAIL, POSTAGE
7 PREPAID, TO, (NAME OF PURCHASER) AT
8 (STREET ADDRESS OF PURCHASER'S PLACE OF BUSINESS) NOT LATER THAN
9 (ENTER DATE AND TIME OF DAY). I HEREBY CANCEL THIS
10 TRANSACTION

11 (DATE)
12 (SELLER'S SIGNATURE).

13 (3) The equity purchaser shall provide the homeowner with
14 a copy of the equity purchase contract and the attached notice of
15 cancellation.

16 (4) The time during which the homeowner may cancel the
17 equity purchase contract does not begin to run until the equity
18 purchaser has complied with this section.

19 Sec. 23. A transaction in which a homeowner purports to
20 grant a residence in foreclosure to an equity purchaser by an
21 instrument that appears to be an absolute conveyance and in which
22 an option to repurchase is reserved to the homeowner or is given by
23 the equity purchaser to the homeowner shall be permitted only where
24 all of the following conditions have been met:

25 (1) The reconveyance contract complies in all respects

1 with section 20 of this act;

2 (2) The reconveyance contract provides the homeowner
3 with a nonwaivable, thirty-day right to cure any default of the
4 reconveyance contract and specifies that the homeowner may exercise
5 this right to cure on at least three separate occasions during the
6 term of such reconveyance contract;

7 (3) The equity purchaser fully assumes or discharges the
8 lien in foreclosure as well as any prior liens that will not be
9 extinguished by the foreclosure, which assumption or discharge
10 shall be accomplished without a violation of the terms and
11 conditions of the liens being assumed or discharged;

12 (4) The equity purchaser verifies and can demonstrate
13 that the homeowner has or will have a reasonable ability to make
14 the lease payments and to repurchase the residence in foreclosure
15 within the term of the option to repurchase under the reconveyance
16 contract. For purposes of this section, there is a rebuttable
17 presumption that the homeowner has a reasonable ability to make
18 lease payments and to repurchase the residence in foreclosure if
19 the homeowner's payments for primary housing expenses and regular
20 principal and interest payments on other personal debt do not
21 exceed sixty percent of the homeowner's monthly gross income; and

22 (5) The price the homeowner must pay to exercise
23 the option to repurchase the residence in foreclosure is not
24 unconscionable. Without limitation on available claims under
25 section 26 of this act, a repurchase price exceeding twenty-five

1 percent of the price at which the equity purchaser acquired the
2 residence in foreclosure creates a rebuttable presumption that the
3 reconveyance contract is unconscionable. The acquisition price paid
4 by the equity purchaser may include any actual costs incurred by
5 the equity purchaser in acquiring the residence in foreclosure,
6 including repairs and capital improvements, and may include below
7 market rent discounts. The equity purchaser shall provide the
8 homeowner with documentation proving such costs and below market
9 rent discounts prior to the homeowner's exercise of the option to
10 purchase.

11 Sec. 24. A provision in an equity purchase contract
12 between an equity purchaser and a homeowner is void as against
13 public policy if it attempts or purports to:

14 (1) Waive any of the rights specified in sections 19 to
15 27 of this act or the right to a jury trial;

16 (2) Consent to jurisdiction for litigation or choice of
17 law in a state other than Nebraska;

18 (3) Consent to venue in a county other than the county in
19 which the residence in foreclosure is located; or

20 (4) Impose any costs or fees greater than the actual
21 costs and fees.

22 Sec. 25. (1) The equity purchase contract provisions
23 required by sections 19 to 24 of this act shall be provided and
24 completed in conformity with such sections by the equity purchaser.

25 (2) Until the time within which the homeowner may cancel

1 the transaction has fully elapsed, the equity purchaser shall not
2 do any of the following:

3 (a) Accept from a homeowner an execution of, or induce a
4 homeowner to execute, an instrument of conveyance of any interest
5 in the residence in foreclosure;

6 (b) Record with the register of deeds any document,
7 including, but not limited to, the equity purchase contract, or any
8 lease, lien, or instrument of conveyance that has been signed by
9 the homeowner;

10 (c) Transfer or encumber or purport to transfer or
11 encumber an interest in the residence in foreclosure to a third
12 party; or

13 (d) Pay the homeowner any consideration.

14 (3) Within ten days following receipt of a notice of
15 cancellation given in accordance with sections 21 and 22 of this
16 act, the equity purchaser shall return without condition the
17 original equity purchase contract and any other documents signed by
18 the homeowner.

19 (4) An equity purchaser shall not make any untrue or
20 misleading statements of material fact regarding the value of the
21 residence in foreclosure, the amount of proceeds the homeowner
22 will receive after a foreclosure sale, any equity purchase contract
23 term, the homeowner's rights or obligations incident to or arising
24 out of the sale transaction, or the nature of any document that the
25 equity purchaser induces the homeowner to sign or any other untrue

1 or misleading statement concerning the sale of the residence in
2 foreclosure to the equity purchaser.

3 Sec. 26. (1) An equity purchaser or associate may not
4 facilitate or engage in any transaction that is unconscionable
5 given the terms and circumstances of the transaction.

6 (2)(a) If a court, as a matter of law, finds an equity
7 purchase contract or any clause of such contract to have been
8 unconscionable at the time it was made, the court may refuse to
9 enforce the equity purchase contract, enforce the remainder of the
10 equity purchase contract without the unconscionable clause, or so
11 limit the application of any unconscionable clause as to avoid an
12 unconscionable result.

13 (b) When it is claimed or appears to the court that the
14 contract or any clause thereof may be unconscionable, the parties
15 shall be afforded a reasonable opportunity to present evidence as
16 to its commercial setting, purpose, and effect to aid the court in
17 making the determination.

18 (c) In order to support a finding of unconscionability,
19 there must be evidence of some bad faith overreaching on the part
20 of the equity purchaser or associate such as that which results
21 from an unreasonable inequality of bargaining power or under other
22 circumstances in which there is an absence of meaningful choice for
23 one of the parties, together with contract terms that are, under
24 standard industry practices, unreasonably favorable to the equity
25 purchaser or associate.

1 Sec. 27. Any equity purchase contract, rental agreement,
2 lease, or option or right to repurchase and any notice, conveyance,
3 lien, encumbrance, consent, or other document or instrument signed
4 by a homeowner shall be written in English and shall be accompanied
5 by a written translation from English into any other language
6 principally spoken by the homeowner, certified by the person making
7 the translation as a true and correct translation of the English
8 version. The translated version shall be presumed to have equal
9 status and credibility as the English version.

10 Sec. 28. A person who violates any provision of the
11 Nebraska Foreclosure Protection Act is guilty of a Class IV felony.

12 Sec. 29. Section 87-302, Revised Statutes Cumulative
13 Supplement, 2006, is amended to read:

14 87-302 (a) A person engages in a deceptive trade
15 practice when, in the course of his or her business, vocation,
16 or occupation, he or she:

17 (1) Passes off goods or services as those of another;

18 (2) Causes likelihood of confusion or of misunderstanding
19 as to the source, sponsorship, approval, or certification of goods
20 or services;

21 (3) Causes likelihood of confusion or of misunderstanding
22 as to affiliation, connection, or association with, or
23 certification by, another;

24 (4) Uses deceptive representations or designations of
25 geographic origin in connection with goods or services;

1 (5) Represents that goods or services have sponsorship,
2 approval, characteristics, ingredients, uses, benefits, or
3 quantities that they do not have or that a person has a
4 sponsorship, approval, status, affiliation, or connection that he
5 or she does not have;

6 (6) Represents that goods are original or new if they
7 are deteriorated, altered, reconditioned, reclaimed, used, or
8 secondhand, except that sellers may repair damage to and make
9 adjustments on or replace parts of otherwise new goods in an effort
10 to place such goods in compliance with factory specifications;

11 (7) Represents that goods or services are of a particular
12 standard, quality, or grade, or that goods are of a particular
13 style or model, if they are of another;

14 (8) Disparages the goods, services, or business of
15 another by false or misleading representation of fact;

16 (9) Advertises goods or services with intent not to sell
17 them as advertised;

18 (10) Advertises goods or services with intent not
19 to supply reasonably expectable public demand, unless the
20 advertisement discloses a limitation of quantity;

21 (11) Makes false or misleading statements of fact
22 concerning the reasons for, existence of, or amounts of price
23 reductions;

24 (12) Uses or promotes the use of a chain distributor
25 scheme in connection with the solicitation of business or personal

1 investments from members of the public;

2 (13) With respect to a sale or lease to a natural person
3 of goods or services purchased or leased primarily for personal,
4 family, household, or agricultural purposes, uses or employs any
5 referral or chain referral sales technique, plan, arrangement, or
6 agreement; ~~or~~

7 (14) Knowingly makes a false or misleading statement in a
8 privacy policy, published on the Internet or otherwise distributed
9 or published, regarding the use of personal information submitted
10 by members of the public; or-

11 (15) Violates any provision of the Nebraska Foreclosure
12 Protection Act.

13 (b) In order to prevail in an action under the Uniform
14 Deceptive Trade Practices Act, a complainant need not prove
15 competition between the parties.

16 (c) This section does not affect unfair trade practices
17 otherwise actionable at common law or under other statutes of this
18 state.

19 Sec. 30. Original section 87-302, Revised Statutes
20 Cumulative Supplement, 2006, is repealed.